OFFICE SUPREME COURT U. S.
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JAMES H. McKENNEY, Clerk.

108-165-

SUPREME COURT OF THE UNITED STATES.

October Term, 1882.

BENJAMIN S. HILTON, *Appellant*,
vs.
WILLIAM H. DICKINSON, *Appellee*.

No. 531.

Brief in Reply.

Counsel for appellant seeks to bring to the attention of the Court a certain paper "filed by appellant Devlin in this court."

It is, I respectfully submit, entirely irregular to invite the attention of the Court to a paper not in the record, and not filed in this appeal. The paper he has referred to was filed only a day or two since, viz.: Saturday, January 27, 1883. It reads as follows:

SUPREME COURT OF THE UNITED STATES.
OCTOBER TERM, 1882.

BENJ. S. HILTON, *Appellant*, and
JOHN DEVLIN, *Appellant*,
vs.
WILLIAM H. DICKINSON and CHARLES D. GILMORE, *Appellees*

The Clerk will please enter my appearance for the appellant, John Devlin, in this cause, and file the assignment hereto annexed from William H. Dickinson to John Devlin.

M. F. MORRIS,
For John Devlin.

There is no such cause as "Benj. S. Hilton, appellant, and John Devlin, appellant, *vs.* William H. Dickinson and Charles D. Gilmore, appellees." Counsel who undertook to place this paper upon the files of the court undoubtedly meant to have it filed in Devlin's appeal. But that appeal was null and void—no appearance having been entered, and the cause not having been docketed during the October Term, 1881, to which term the appeal had been taken. These cases growing out of a bill of interpleader, each of the three defendants must be treated as if he had filed his bill against the other two. (*Horton* vs. *Baptist Church*, 34 Vt., 309.) The appeals taken by Devlin and by Hilton were distinct and separate appeals. They required an appearance and docketing of the cause by the respective appellants. (*The S. S. Osborne*, 105 U. S., 451.) Whether Section 1013 Rev. Stats., providing that one transcript of the record filed by either appellant may be used by parties who both appeal from the decree below, has application here or not, it is clear that this provision does not permit an appellant to neglect to enter his appearance or give security for costs, until after the term has expired to which his appeal is returnable, andstill be in court as appellant.

Besides, even if it had been filed in this appeal, this paper is not authenticated before any official, and is unaccompanied by an affidavit. As it is not offered by Mr. Dickinson, or his counsel, the only possible use that can be made of it is to show that Mr. Dickinson has parted with his interest. This is a matter of proof which ought to be brought before the court in the same strict manner as other legal proof.

As the record now stands, counsel for Mr. Dickinson (who has never withdrawn his appearance) has called the attention of the Court to the fact that this cause is not within the jurisdiction of the Court. Any rights growing out of this alleged assignment can be determined in the "Supreme Court of the District of Columbia," where the paper

belongs, if anywhere. There are no controverted questions of fact to be examined, but the single inquiry whether by the form of the appeal the fund here litigated is of the value of more than $2500 in the appeal now pending. The appellant, instead of taking an appeal from the decree of the General Term, as a whole, has seen fit to appeal from a part only. By so doing, the amount in dispute in this court plainly appears, on inspection, to be within the jurisdictional limit; and his appeal should therefore be dismissed.

FRANK W. HACKETT,
For Appellee.